

Claimant worked as a house parent at a home for troubled youth, Villages, Inc. On May 30, 1994, one of the residents struck claimant on the side of the head. That evening claimant experienced a bad headache and went to bed early. The next morning he suffered a seizure while in the shower and sustained a compression fracture to a vertebra when he fell.

Respondent argues claimant has not met his burden. He has not, respondent argues, shown that the seizure was caused by the blow to his head at work. Respondent suggests the low Tegretol level in claimant's blood, not the head injury, caused the seizure and subsequent injury.

As respondent points out, claimant began having seizures in 1972 and took Tegretol to control the seizures. After the subject injury, blood tests showed the Tegretol level in claimant's blood to be lower than prescribed. Claimant had experienced seizures on other occasions when his physician reduced the Tegretol and attempted to wean claimant from the medication. Respondent also points to the records of Dr. Huang, the consulting neurologist. Dr. Huang's June 1, 1994 summary indicates the etiology of the recurrent seizures is unclear.

The Appeals Board finds other evidence more persuasive. Although the initial blood test showed low Tegretol level, a repeat of the test showed a normal level. Claimant also has a history of seizure following head injury. Most importantly, Dr. Huang, the consulting neurologist, ultimately concluded that the closed head-facial injury at work probably caused the current seizure. The Appeals Board finds the head injury at work more probably than not caused claimant's seizure of May 31, 1994 and subsequent injuries.

(3) The Appeals Board does not have jurisdiction to review the findings made by the Administrative Law Judge relating to the duration of claimant's total disability or the average weekly wage and resulting temporary total rate. Since claimant's injury arose out of and in the course of his employment, the Administrative Law Judge has jurisdiction to determine the proper temporary total rate and to decide how long the claimant was temporarily totally disabled. Neither finding is listed in K.S.A. 44-534a as a jurisdictional finding. Respondent's challenge to these findings alleges, in substance, the Administrative Law Judge erred, not that he exceeded his jurisdiction.

WHEREFORE, the Appeals Board finds the September 26, 1994 Order by Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Roger D. Fincher, Topeka, KS
Kip A. Kubin, Overland Park, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director